

Invitation to Comment

Title	Civil Discovery: <i>Commission to Take Deposition Outside California</i> (adopt form DISC-030)
Summary	<i>Commission to Take Deposition Outside California</i> (form DISC-030) would be adopted, effective January 1, 2008, as an optional form for litigants to request, and for courts to issue or order, commissions to take out-of-state depositions.
Source	Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665, Patrick.o'donnell@jud.ca.gov
Discussion	<p>Under Code of Civil Procedure section 2026.010, which provides for the issuance of commissions to take depositions outside California, the process for obtaining commissions is uncomplicated and requires no judicial involvement in many or most instances. The statute provides:</p> <p style="padding-left: 40px;">On request, the clerk of the court shall issue a commission authorizing the deposition in another state or place. The commission shall request that process issue in the place where the examination is to be held, requiring attendance and enforcing the obligations of the deponents to produce documents and answer questions. The commission shall be issued by the clerk to any party in any action pending in its venue without a noticed motion or court order. The commission may contain terms that are required by the foreign jurisdiction to initiate the process. If a court order is required by the foreign jurisdiction, an order for a commission may be obtained by ex parte application.</p> <p style="text-align: right;">(Code Civ. Proc., § 2026.010(f).)</p> <p>The availability of standardized commission forms will help litigants and courts process commission requests expeditiously, in keeping with the ministerial nature of the commission process under the Code of Civil Procedure.</p>

The *Commission to Take Deposition Outside California* (form DISC-030) can be used for clerk-issued or court-ordered commissions under Code of Civil Procedure section 2026.010(f), with litigants making their selection based on the requirements of the particular out-of-state jurisdiction where the deposition is to be taken.

To eliminate potential confusion on the part of out-of-state court clerks, who are likely unfamiliar with California law and might perceive clerk-issued commissions as less compelling than court-ordered commissions, the form explains that clerk-issued commissions are authorized by California law. The form recites the necessary statutory language (i.e., it “request[s] that process issue in the place where the examination is to be held, requiring attendance and enforcing the obligations of the deponents to produce documents and answer questions”). Because section 2026.010(f) provides that “[t]he commission may contain terms that are required by the foreign jurisdiction to initiate the process,” the form also provides for the attachment of additional pages to supplement the form as needed.

Attachment

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr/> TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY DRAFT - 4/26/07 NOT YET ADOPTED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
SHORT TITLE:	
COMMISSION TO TAKE DEPOSITION OUTSIDE CALIFORNIA <input type="checkbox"/> ORDERED BY COURT <input type="checkbox"/> ISSUED BY THE CLERK OF THE COURT	CASE NUMBER:

1. The Superior Court of California hereby authorizes the deposition, upon oral examination, of (*name of deponent*):

2. The deposition is to be taken in (*state of the United States, territory, or insular possession subject to its jurisdiction*):

3. The deposition will be conducted (*check one*):
 - a. under the supervision of a person who is authorized to administer oaths by the laws of the United States or those of the place where the examination is to be held, and who is not otherwise disqualified under California Code of Civil Procedure sections 2025.320 and 2025.340(b)-(f); or
 - b. Before (*name of appointee*):
 who is appointed to administer oaths and to take testimony.
4. Additional terms are contained in attachment 1. Number of pages attached: _____.

5. Under California Code of Civil Procedure section 2026.010, California authorizes that a commission to take an out-of-state deposition may be issued by the clerk of the court or, if the foreign jurisdiction requires it, by order of the court.

6. The Superior Court of the State of California hereby requests that process issue in the above-referenced place where the examination is to be held, requiring the attendance and enforcing the obligations of the deponent to produce documents and answer questions.



Judge

OR

Clerk, by _____, Deputy

Item SPR07-21 Response Form

Title: Civil Discovery: *Commission to Take Deposition Outside California*
(adopt form DISC-030)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*